



U.S. Department of Justice

Immigration and Naturalization Service

R

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED]
EAC 99 008 51612

Office: Vermont Service Center

Date:

JAN 21 2000

IN RE: Petitioner:
Beneficiary:

[REDACTED]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:

[REDACTED]

Public Copy
Identify
prevent identity information
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mali who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that he: (1) is the spouse of a citizen or lawful permanent resident of the United States; (2) has resided in the United States with the citizen or lawful permanent resident spouse; (3) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; (4) is a person of good moral character; (5) is a person whose deportation (removal) would result in extreme hardship to himself, or to his child; and (6) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner is an abused spouse. He states that the petitioner has indicated that his wife had a substance abuse problem which she was very skillful in concealing from him until after they were married. He further states that due to her substance abuse problem, she was not capable of participating in many of the important activities of a normal married life. Counsel indicates that they intend to submit a detailed brief within 30 days. However, it has been approximately six months since the filing of the appeal and no additional evidence has been provided.

8 C.F.R. 204.2(c)(1) states, in pertinent parts, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner arrived in the United States as a visitor on December 29, 1990. The petitioner married his United States citizen spouse on December 1, 1992 at New York City, New York. On October 6, 1998, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

Because the petitioner furnished insufficient evidence to establish that he has met the requirements of 8 C.F.R. 204.2(c)(1)(i)(A), (D), (E), (F), (G) and (H), he was requested on October 26, 1998 to submit additional evidence. The director listed examples of evidence he may submit to establish eligibility. The director, in his decision, reviewed and discussed all the evidence furnished by the petitioner, including evidence furnished in response to the director's request. The discussion will not be repeated here. The director, however, noted that the record did not contain sufficient, credible evidence to establish that the petitioner qualifies for the benefit sought. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. 204.2(c)(2)(i).

While counsel states on appeal that he is submitting a brief and/or additional evidence, no additional evidence has been entered into the record of proceeding. On appeal, the petitioner has failed to overcome the director's findings.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.